

Aug 02, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EMPIRE HEALTH FOUNDATION, a
Washington nonprofit corporation,

Plaintiff,

v.

CHS/COMMUNITY HEALTH
SYSTEMS INC., a Delaware
corporation; SPOKANE
WASHINGTON HOSPITAL
COMPANY LLC, a Delaware limited
liability company; and SPOKANE
VALLEY WASHINGTON HOSPITAL
COMPANY LLC, a Delaware limited
liability company,

Defendants.

No. 2:17-cv-00209-SMJ

**ORDER GRANTING
DEFENDANTS' MOTION FOR
PARTIAL RECONSIDERATION
OF PRETRIAL ORDER**

Before the Court, without oral argument, is Defendants CHS/Community Health Systems Inc., Spokane Washington Hospital Company LLC, and Spokane Valley Washington Hospital Company LLC's Motion for Partial Reconsideration of Pretrial Order, ECF No. 244. They ask the Court to reconsider the portion of its July 29, 2019 Pretrial Order, ECF No. 238 at 48, that sustained Plaintiff Empire Health Foundation's objections to Defendants' exhibits 717, 719, and 721. Having reviewed the motion and the file in this matter, the Court is fully informed without the need

1 for a response from Plaintiff. *See* ECF No. 72 at 8. The Court grants the motion
2 based on Defendants’ clarification of their purpose in offering these exhibits.

3 Because Defendants filed their motion for reconsideration within twenty-
4 eight days after entry of the Pretrial Order, the Court treats the motion as one to alter
5 or amend the order under Federal Rule of Civil Procedure 59(e).¹ *See Rishor v.*
6 *Ferguson*, 822 F.3d 482, 489–90 (9th Cir. 2016); *Am. Ironworks & Erectors, Inc. v.*
7 *N. Am. Constr. Corp.*, 248 F.3d 892, 898–99 (9th Cir. 2001).

8 Altering or amending an order under Rule 59(e) “is an ‘extraordinary
9 remedy’ usually available only when (1) the court committed manifest errors of law
10 or fact, (2) the court is presented with newly discovered or previously unavailable
11 evidence, (3) the decision was manifestly unjust, or (4) there is an intervening
12 change in the controlling law.” *Rishor*, 822 F.3d at 491–92 (quoting *Allstate Ins.*
13 *Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011)); *accord McDowell v. Calderon*,
14 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc).

15 Here, Defendants’ exhibits 717, 719, and 721 are articles from Spokane,
16 Washington news sources, which discuss improvements made to Deaconess
17 Medical Center’s emergency services. Plaintiff objected to each exhibit on hearsay

18
19 ¹ Because Defendants did not file their motion for reconsideration more than
20 twenty-eight days after entry of the Pretrial Order, the Court declines their invitation
to treat the motion as one for relief from judgment under Rule 60(b). *See Am.*
Ironworks & Erectors, Inc. v. N. Am. Constr. Corp., 248 F.3d 892, 898–99 (9th Cir.
2001); *Moore v. City of Santa Barbara*, 727 F. App’x 307, 308 n.1 (9th Cir. 2018).

1 and relevance grounds. ECF No. 182 at 48–49. Defendants responded that each
2 exhibit was (1) “not offered for its truth” and (2) “relevant to Defendants’
3 reasonable efforts to increase charity care and the fashioning of an equitable remedy
4 in this case.” ECF No. 189 at 47–48. The Court sustained Plaintiff’s objections to
5 these exhibits. ECF No. 238 at 48. Although not stated in the Pretrial Order, the
6 Court reasoned these exhibits constitute hearsay.

7 In their motion for reconsideration, Defendants clarify they “offered these
8 exhibits to show that Defendants made a reasonable effort to increase charity care
9 by *notifying the community* about the availability of new emergency services at
10 Deaconess’s facilities.” ECF No. 244 at 3 (emphasis added). Defendants elaborate
11 these exhibits “(regardless of their truth) demonstrate Defendants’ *effort to attract*
12 *patients* to Deaconess’s emergency departments, the main point of contact for
13 charity-care-eligible patients.” *Id.* (emphasis added)

14 With this clarification, it is apparent that Defendants have offered exhibits
15 717, 719, and 721 for an acceptable purpose and not to “prove the truth of the matter
16 asserted in the statement.” Fed. R. Evid. 801(c)(2). Because these exhibits do not
17 constitute hearsay, the Court grants partial reconsideration of the Pretrial Order in
18 order to correct a manifest legal error.

19 Accordingly, **IT IS HEREBY ORDERED:**

20 **1. Defendants’ Motion for Partial Reconsideration of Pretrial Order, ECF**

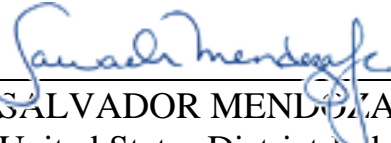
1 **No. 244, is GRANTED.**

2 **2.** The Court's July 29, 2019 Pretrial Order, **ECF No. 238 at 48**, is
3 **AMENDED** as follows:

4 **A.** Plaintiff's objections to Defendants' exhibits 717, 719, and 721,
5 **ECF No. 182**, are **OVERRULED**.

6 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
7 provide copies to all counsel.

8 **DATED** this 2nd day of August 2019.

9 
10 SALVADOR MENDOZA, JR.
 United States District Judge